



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

City of Dexter,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 18-003874

Power Wellness Management LLC,
Respondent.

Presiding Judge
David B Marmon

ORDER REMOVING CASE FROM ABEYANCE

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

ORDER DENYING RESPONDENT'S MOTION FOR COSTS

FINAL OPINION AND JUDGMENT

INTRODUCTION

On October 12, 2018, Respondent filed a Motion requesting that the Tribunal enter summary judgment in its favor in the above-captioned case. Respondent's Motion also seeks costs.

On November 2, 2018, Petitioner filed a response to the Motion.

On November 9, 2018, the Tribunal issued an order holding the case in abeyance pending an appellate decision in *City of Dexter v Chelsea Health and Wellness Foundation*, Court of Appeals Docket No. 342364, appealed from MOAHR Docket No. 17-004637.

On May 16, 2019, Respondent filed a response to the Tribunal's November 9, 2018 Order, indicating that the Court of Appeals issued its decision in Docket No.

342364 and that neither party timely filed leave to appeal that decision to the Supreme Court of Michigan.

The Tribunal finds that removing this case from abeyance is proper at this time. Further, the Tribunal has reviewed the Motion, responses, and the evidence submitted and finds that granting Respondent's Motion for Summary Disposition and dismissing this proceeding under MCR 2.116(C)(8) is warranted. The Tribunal further finds that denying Respondent's Motion under MCR 2.116(C)(5), (C)(6), and (C)(7) is warranted. Finally, the Tribunal finds that denying Respondent's Motion for Costs is appropriate.

RESPONDENT'S CONTENTIONS

In support of its Motion, Respondent contends that the facts at issue are substantially similar to those in MOAHR Docket No. 17-004637, in which the Tribunal granted summary disposition in favor of Respondent under MCR 2.116(C)(8). Respondent argues that Petitioner lacks standing to appeal a second denial of a State Tax Commission ("STC") order to the Tribunal under the doctrines of res judicata and collateral estoppel. Respondent further argues that Petitioner lacked standing to commence its STC appeal under MCL 211.154(7). Respondent argues that Petitioner's argument under MCL 211.181 is without merit. Finally, Respondent contends that the Tribunal should award it costs and attorney fees.

PETITIONER'S CONTENTIONS

In support of its response, Petitioner contends that its Petition is supported by the requirements of MCL 211.154 and MCL 211.181, which require Petitioner to assess the user of property and also requires Petitioner to request the STC to correct the tax rolls to properly assess property as necessary. Petitioner argues that preservation of this

appeal is necessary until it is determined under which authority the subject property should be taxed for the years at issue.

STANDARD OF REVIEW

There is no specific Tribunal rule governing motions for summary disposition. Therefore, the Tribunal is bound to follow the Michigan Rules of Court in rendering a decision on such motions.¹ In this case, Respondent moves for summary disposition under MCR 2.116(C)(5), (C)(6), (C)(7), and (C)(8).

MCR 2.116(C)(5) states that a motion for summary disposition may be granted if “[t]he party asserting the claim lacks the legal capacity to sue.” In reviewing the motion for summary disposition, a court considers the pleadings, depositions, admissions, affidavits, and other documentary evidence submitted by the parties.²

MCR 2.116(C)(6) states that a motion for summary disposition may be based on the grounds that “[a]nother action has been initiated between the same parties involving the same claim.” MCR 2.101(B) provides that actions are initiated upon the filing of a complaint and not upon service of process.³ However, “MCR 2.116(C)(6) does not operate where another suit between the same parties involving the same claims is no longer pending at the time the motion is decided.”⁴

Under MCR 2.116(C)(7), the claim is barred because of “release, payment, prior judgment, immunity granted by law, statute of limitations, statute of frauds, an agreement to arbitrate or to litigate in a different forum, infancy or other disability of the

¹ See TTR 215.

² See MCR 2.116(G)(5); see also *Flint Cold Storage v Dep’t of Treasury*, 285 Mich App 483, 492; 776 NW2d 387 (2009).

³ See also *Fast Air, Inc v Knight*, 235 Mich App 541, 544; 599 NW2d 489 (1999).

⁴ *Fast Air*, 235 Mich App at 545.

moving party, or assignment or other disposition of the claim before commencement of action.”

In *RDM Holdings, LTD v Continental Plastics Co*,⁵ the Michigan Court of Appeals addressed a motion for summary disposition filed under MCR 2.116(C)(7). In *RDM*, the court stated:

[T]his Court must consider not only the pleadings, but also any affidavits, depositions, admissions, or other documentary evidence filed or submitted by the parties. The contents of the complaint must be accepted as true unless contradicted by the documentary evidence. This Court must consider the documentary evidence in a light most favorable to the nonmoving party. If there is no factual dispute, whether a plaintiff's claim is barred under a principle set forth in MCR 2.116(C)(7) is a question of law for the court to decide. If a factual dispute exists, however, summary disposition is not appropriate.⁶

Motions under MCR 2.116(C)(8) are appropriate when “[t]he opposing party has failed to state a claim on which relief can be granted.” The Court of Appeals has held that:

A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a complaint. Under this subrule “[a]ll well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant.” When reviewing such a motion, a court must base its decision on the pleadings alone. In a contract-based action, however, the contract attached to the pleading is considered part of the pleading. Summary disposition is appropriate under MCR 2.116(C)(8) “if no factual development could possibly justify recovery.”⁷

CONCLUSIONS OF LAW

Having reviewed the file in this case, the Tribunal finds that this case was placed in abeyance pending final resolution of MOAHR Docket No. 17-004637. The Michigan

⁵ *RDM Holdings, LTD v Continental Plastics Co*, 281 Mich App 678; 762 NW2d 529 (2008).

⁶ *RDM Holdings*, 281 Mich App at 687 (citations omitted).

⁷ *Liggett Restaurant Group, Inc v City of Pontiac*, 260 Mich App 127, 133; 676 NW2 633 (2003) (citations omitted).

Court of Appeals issued its decision in that case on December 20, 2018 and denied reconsideration on February 6, 2019. Neither party sought leave to appeal to the Supreme Court of Michigan, and as such and pursuant to the Tribunal's November 9, 2018 Order in this case, removing this case from abeyance is appropriate at this time.

Further, the Tribunal has carefully considered Respondent's Motion under MCR 2.116 (C)(5), (C)(6), (C)(7), and (C)(8). The Tribunal finds that granting the Motion under MCR 2.116(C)(8) is warranted. The Tribunal further finds that denying the Motion under MCR 2.116(C)(5), (C)(6), and (C)(7) is appropriate.

Petitioner raised nearly identical arguments in this proceeding as it did in MOAHR Docket No. 17-004637. After the Tribunal granted summary disposition in favor of Respondent in that case, Petitioner appealed the result to the Michigan Court of Appeals, which interpreted MCL 211.154(7) in a manner consistent with the Tribunal.

MCL 211.154(7) sets forth the Tax Tribunal's jurisdiction to hear an appeal of the STC's decision whether to make a correction under MCL 211.154(1). This subsection grants the Tax Tribunal jurisdiction only for appeals brought by the *taxpayer*. . . . An aggrieved assessor may seek review of the STC's decision in circuit court, rather than the Tax Tribunal.⁸

The Court of Appeals' decision also included a footnote indicating that, while its decision in *City of Monroe v Janssens*⁹ was unpublished, the facts were virtually indistinguishable from the facts in that case and that the *Janssens* decision was good persuasive authority.

⁸ See *City of Dexter v Chelsea Health & Wellness Foundation and Power Wellness Management, LLC*, unpublished opinion per curiam of the Court of Appeals, issued December 20, 2018 (Docket No. 342364).

⁹ See *City of Monroe v Janssens*, unpublished opinion per curiam of the Court of Appeals, issued May 9, 2017 (Docket No. 329527).

Here, the same underlying logic is obvious in support of summary disposition under MCR 2.116(C)(8). The facts are virtually unchanged from the prior appeal. Only a taxpayer aggrieved by an STC Order may appeal that decision to the Tribunal under MCL 211.154(7), and Petitioner is a taxing authority, not a taxpayer.

Summary disposition is not appropriate under MCR 2.116(C)(5). Although the Tribunal lacks jurisdiction over Petitioner's appeal due to its status as a taxing authority, Respondent has not presented any evidence that Petitioner lacks a legal capacity to engage in litigation.

Summary disposition is not appropriate under MCR 2.116(C)(6). Although another action involving the same manner of dispute was pending between the parties at the time of Respondent's Motion, it is no longer properly pending before any court or tribunal.

Summary disposition is not appropriate under MCR 2.116(C)(7). Respondent has failed to provide sufficient evidence to support this claim.

Finally, the Tribunal finds that an award of costs and attorney fees is not appropriate. In the light most favorable to Petitioner, the Tribunal finds that the law remained unsettled due to the lack of a precedential and clearly analogous published decision upon the merits of the facts at issue in this case prior to Petitioner's filing of its Tribunal Petition.

JUDGMENT

IT IS ORDERED that this case is REMOVED FROM ABEYANCE.

IT IS FURTHER ORDERED that Respondent's Motion for Summary Disposition is GRANTED under MCR 2.116(C)(8).

IT IS FURTHER ORDERED that Respondent's Motion for Summary Disposition is DENIED under MCR 2.116(C)(5), (C)(6), and (C)(7).

IT IS FURTHER ORDERED that Respondent's Motion for Costs is DENIED.

IT IS FURTHER ORDERED that the case is DISMISSED.

This Final Opinion and Judgment resolves the last pending claim and closes the case.

APPEAL RIGHTS

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.¹⁰ Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is \$50.00 in the Entire Tribunal and \$25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee.¹¹ A copy of the motion must be served on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion.¹² Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.¹³

A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal by right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave."¹⁴ A copy of the claim must be filed with the Tribunal with the filing fee required for

¹⁰ See TTR 261 and 257.

¹¹ See TTR 217 and 267.

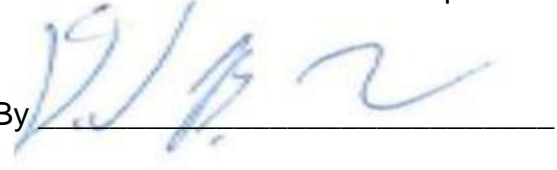
¹² See TTR 261 and 225.

¹³ See TTR 261 and 257.

¹⁴ See MCL 205.753 and MCR 7.204.

certification of the record on appeal.¹⁵ The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.¹⁶

By

A handwritten signature in blue ink, appearing to be "D. B. R.", written over a horizontal line.

Entered: May 21, 2019
bw

¹⁵ See TTR 213.

¹⁶ See TTR 217 and 267.